MONTANA LEGISLATIVE HISTORY

Chapter 517 ~~19~~ 2001

Bill HB 500 S_____ Original bill & history ✓ C

H. Committee on Business & LABOR

Hearing Date(s) 2/08 ___C

ex 2/12 ___C

_____ ___C

_____ ___C

Date Out _____ ___C

S. Committee on Business & Labor

Hearing Date(s) 3/09 ___C

ex 3/09 ___C

_____ ___C

Amendments by ~~Gov~~ 3/29 ___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Montana Legislative Branch

Montana Legislature

Detailed Bill Information

2001 Session

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Bill Draft Number: LC0386 Current Bill Text
Bill Type - Number: HB 500 Fiscal Note
Short Title: Revise certain provisions of little Davis-Bacon act
Primary Sponsor: David Wanzenried

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 78

Print Friendly

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	05/01/2001			
(H) Signed by Governor	05/01/2001			
(H) Transmitted to Governor	04/23/2001			
(S) Signed by President	04/21/2001			
(H) Signed by Speaker	04/19/2001			
(C) Sent to Printing	04/18/2001			
(H) Returned from Enrolling	04/17/2001			
(C) Sent to Printing	04/17/2001			
(H) Sent to Enrolling	04/17/2001			
(S) Returned to House Concurred in Governor's Proposed Amendments	04/13/2001			
(S) 3rd Reading Governor's Proposed Amendments Concurred	04/13/2001	49	0	
(S) Scheduled for 3rd Reading	04/13/2001			
(S) 2nd Reading Governor's Proposed Amendments Concurred on Voice Vote	04/12/2001	49	0	
(S) Scheduled for 2nd Reading	04/12/2001			
(H) 3rd Reading Governor's Proposed Amendments Concurred	04/11/2001	74	26	
(H) Scheduled for 3rd Reading	04/11/2001			

(H) 2nd Reading Governor's Proposed Amendments Concurred	04/10/2001	88	12	
(H) Scheduled for 2nd Reading	04/10/2001			
(H) Returned with Governor's Proposed Amendments	03/29/2001			
(H) Transmitted to Governor	03/19/2001			
(S) Signed by President	03/19/2001			
(H) Signed by Speaker	03/16/2001			
(C) Sent to Printing	03/16/2001			
(H) Returned from Enrolling	03/16/2001			
(H) Sent to Enrolling	03/16/2001			
(S) Returned to House	03/15/2001			
(S) 3rd Reading Concurred	03/15/2001	31	17	
(S) 2nd Reading Concurred on Voice Vote	03/14/2001	47	3	
(S) Scheduled for 2nd Reading	03/14/2001			
(S) Committee Report--Bill Concurred	03/09/2001			(S) Business and Labor
(S) Committee Executive Action--Bill Concurred	03/09/2001	9	0	(S) Business and Labor
(S) Hearing	03/09/2001			(S) Business and Labor
(S) Referred to Committee	02/28/2001			(S) Business and Labor
(S) First Reading	02/28/2001			
(H) Transmitted to Senate	02/21/2001			
(H) 3rd Reading Passed	02/21/2001	57	43	
(H) Scheduled for 3rd Reading	02/21/2001			
(C) Sent to Printing	02/19/2001			
(H) 2nd Reading Passed as Amended	02/17/2001	55	44	
(H) 2nd Reading Motion to Amend Carried	02/17/2001	94	0	
(H) Scheduled for 2nd Reading	02/17/2001			
(H) Fiscal Note Printed	02/16/2001			
(H) Scheduled for 2nd Reading	02/16/2001			
(H) Fiscal Note Received	02/13/2001			
(C) Sent to Printing	02/12/2001			
(H) Committee Report--Bill Passed as Amended	02/12/2001			(H) Business and Labor
(H) Committee Executive Action--Bill Passed as Amended	02/12/2001	10	9	(H) Business and Labor
(H) Hearing	02/08/2001			(H) Business and

				Labor
(C) Introduced Bill Text Available Electronically	02/05/2001			
(H) Fiscal Note Requested	02/05/2001			
(H) Referred to Committee	02/05/2001			(H) Business and Labor
(H) First Reading	02/05/2001			
(H) Introduced	02/05/2001			
(C) Draft Delivered to Requester	02/02/2001			
(C) Draft Ready for Delivery	02/01/2001			
(C) Draft in Assembly/Executive Director Review	01/31/2001			
(C) Draft in Final Drafter Review	01/31/2001			
(C) Draft in Input/Proofing	01/31/2001			
(C) Draft to Drafter - Edit Review [CAJ]	01/31/2001			
(C) Draft in Edit	01/31/2001			
(C) Draft in Legal Review	01/31/2001			
(C) Draft Back for Redo	01/29/2001			
(C) Draft Ready for Delivery	01/22/2001			
(C) Draft in Assembly/Executive Director Review	01/22/2001			
(C) Draft in Final Drafter Review	01/22/2001			
(C) Bill Draft Text Available Electronically	01/22/2001			
(C) Draft in Input/Proofing	01/20/2001			
(C) Draft to Drafter - Edit Review [CAJ]	01/20/2001			
(C) Draft in Edit	01/19/2001			
(C) Draft in Legal Review	01/19/2001			
(C) Draft Back for Redo	01/19/2001			
(C) Draft to Drafter - Edit Review [CAJ]	01/19/2001			
(C) Draft in Edit	01/18/2001			
(C) Draft in Legal Review	01/18/2001			
(C) Draft On Hold	11/14/2000			
(C) Draft to Requester for Review	11/03/2000			
(C) Fiscal Note Needed	10/25/2000			
(C) Draft Request Received	10/25/2000			

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Waterman	Mignon	
Drafter	McClure	Eddye	
Primary Sponsor	Wanzenried	David	

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Public Contracts (see also: Contracts)		Simple	PCON
Wages and Salaries		Simple	WAGE

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Additional Bill Information

Probable Fiscal Note: Yes
Preintroduction Required: N
Session Law Ch. Number: 517
DEADLINE
Category: General Bills
Transmittal Date: 02/23/2001
Return (with 2nd house amendments) Date: 03/31/2001

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	01-JUL-01	

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

01/29/2010 12:48 PM Mountain Time
| Look Up Bill Information | Committee and Hearing Information |

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FISCAL NOTE

Bill #: HB0500 **Title:** Revise certain provisions of little Davis Bacon act

Primary Sponsor: David Wanzenried **Status:** As Introduced

Sponsor signature Date Chuck Swysgood, Budget Director Date

Fiscal Summary

	FY2002 Difference	FY2003 Difference
Expenditures:		
State Special Revenue	$18,746	$16,099
Revenue:		
State Special Revenue	0	0
Net Impact on General Fund Balance:	**$0**	**$0**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

Statewide

1. The fiscal impact is seen as minimal if the new provision in section 2 means that the contracting agency can include this requirement in its contracts and can verify the posting at construction progress meetings (which occur approximately once a month on most projects, more infrequently on others). However, if more than a periodic verification of the posting is intended, the costs could prove substantial. It is not possible at this time to define the substantial costs without a better definition of the contracting agency's responsibility to "ensure and maintain".
2. The contracting agency is not responsible for the penalty provision of 18-2-432 should the contractor/subcontractor/employer be in violation of section 2.
3. The notification requirement in section 3 can be accomplished by means of the contract language.

Department of Labor and Industry

4. The construction survey would be done annually and the non-construction services survey would be done every two years.

5. Because a new survey per biennium is added, the Department of Labor and Industry would need 0.50 FTE (grade 9) statistical technician to assist with the added workload, as well as the new rules, new forms, and new methodology to determine standard prevailing wages.

FISCAL IMPACT:

	FY2002 Difference	FY2003 Difference
Department of Labor and Industry, Program 01		
FTE	0.50	0.50
Expenditures:		
Personal Services	11,074	11,450
Operating Expenses	7,672	4,649
TOTAL	$18,746	$16,099
Funding:		
State Special Revenue (02)	18,746	16,099
Revenues:		
State Special Revenue (02)	0	0
Net Impact to Fund Balance (Revenue minus Expenditure):		
State Special Revenue (02)	($18,746)	($16,099)

TECHNICAL NOTES:

1. It is not clear in the language of the bill what the intent is for calculating a wage rate. Hours worked will no longer be used. However, the language "wages must be computed...based on work performed by Montana contractors" does not give a clear basis for calculating a wage rate (assuming enough survey data is collected to set a rate). Does this mean wages paid by employee? Or maybe a minimum wage and a maximum wage paid by a contractor for a particular time period with no reference to the number of employees involved? To make it consistent with other national wage programs, it should collect each wage rate paid by the contractor (or employer?) and the number of employees at each wage rate for a pre-determined period of time. Any method of computation is basically a weighted average of something – the new law just would not weight by hours worked. But the language "based on work performed" is not specific enough to establish intent. Because of this, it has been assumed that it will be up to the department to determine the most appropriate way to set the wage rate and establish for which occupations to set rates.
2. There is concern with the new requirement in section 2 that the contracting agency be "responsible for ensuring" that the wages are posted and maintained. There exists difficulty in determining what this fully encompasses. The fiscal impact is seen as minimal or non-existent if this new provision means that the contracting agency can include this requirement in its contracts and can verify the posting at construction progress meetings (which occur approximately once a month on most projects, more infrequently on others). However, if more than a periodic verification of the posting is intended, the costs could prove substantial. It is not possible at this time to define the substantial costs without a better definition of the contracting agency's responsibility to "ensure and maintain".

HOUSE BILL NO. 500

INTRODUCED BY D. WANZENRIED

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN PROVISIONS OF THE LITTLE DAVIS-BACON LAWS; CHANGING THE PREVAILING WAGE FROM ONE COMPUTED BASED ON A WEIGHTED AVERAGE TO ONE COMPUTED BASED ON WORK PERFORMED; REQUIRING POSTING OF PREVAILING WAGE AND FRINGE BENEFIT RATES; REQUIRING A CONTRACTING AGENCY TO NOTIFY A PUBLIC WORKS CONTRACTOR OR EMPLOYER OF THE REQUIREMENT TO KEEP CERTIFIED PAYROLL RECORDS FOR 3 YEARS AFTER COMPLETION OF WORK ON A PROJECT; REQUIRING SURVEYS OF CONTRACTORS AND EMPLOYERS; AMENDING SECTIONS 18-2-401, 18-2-406, AND 18-2-422, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 18-2-401, MCA, is amended to read:

"18-2-401. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. ~~Sojourners or persons~~ Persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) "Construction services" means work performed by an individual in construction, heavy construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a

public works contract; or

(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) "Contractor" means any general contractor, subcontractor, firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in construction services.

~~(4)~~ (5) "Department" means the department of labor and industry provided for in 2-15-1701.

~~(5)~~ (6) "District" means a prevailing wage rate district established as provided in 18-2-411.

(7) "Employer" means any firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in nonconstruction services.

~~(6)~~ (8) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and zone pay and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public.

~~(7)~~ (9) "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

(a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;

(b) custodial or security services for publicly owned buildings and facilities;

(c) grounds maintenance for publicly owned property;

(d) the operation of public drinking water supply, waste collection, and

waste disposal systems;

(e) law enforcement, including janitors and prison guards;

(f) fire protection;

(g) public or school transportation driving;

(h) nursing, nurse's aid services, and medical laboratory technician services;

(i) material and mail handling;

(j) food service and cooking;

(k) motor vehicle and construction equipment repair and servicing; and

(l) appliance and office machine repair and servicing.

~~(8)~~ (10) "Project location" means the construction site where a public works project involving construction services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and specifications.

~~(9)~~ (11) (a) "Public works contract" means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of $25,000. The nonconstruction services classification does not apply to any school district that at any time prior to April 27, 1999, contracted with a private contractor for the provision of nonconstruction services on behalf of the district.

(b) The term does not include contracts entered into by the department of public health and human services for the provision of human services.

~~(10)~~ (12) "Special circumstances" means all work performed at a facility that is built or developed for a specific Montana public works project and that is located in a prevailing wage district that contains the project location or that is located in a contiguous prevailing wage district.

~~(11)~~ (13) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed ~~from a weighted average wage rate based on all of the hours worked on work~~ by the department based on work performed by Montana contractors who are registered under Title 39, chapter 9, and whose work is performed according to commercial building codes. The work performed must be work of a similar character to the work performed in the district unless the annual survey ~~of~~ of contractors ~~employers~~ in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by ~~a~~ the survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be

those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

~~(12)~~ (14) "Work of a similar character" means work on private ~~or~~ commercial projects as well as work on public projects."

Section 2. Section 18-2-406, MCA, is amended to read:

"18-2-406. Posting wage scale and fringe benefits. ~~Contractors, subcontractors, and employers who are~~ The contractor performing work or providing construction services under public works contracts, as provided in this part, shall post in a prominent and accessible site on the project or ~~work area~~ staging area, not later than the first day of work and continuing for the entire duration of the project, a legible statement of all wages and fringe benefits to be paid to the employees ~~employed on such site or work area~~. The contracting agency is responsible for ensuring that the required statement is posted and maintained."

Section 3. Section 18-2-422, MCA, is amended to read:

"18-2-422. Bid specification and public works contract to contain standard prevailing wage rate and certified payroll record notification. All public works contracts and the bid specifications for those contracts must contain:

(1) a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, that the contractors ~~and subcontractors~~ and employers shall pay during construction of the project; and

(2) a provision requiring the contracting agency to notify each contractor and employer of the requirement to maintain certified payroll records for not less than 3 years after the contractor's or employer's completion of work on the project."

NEW SECTION. **Section 4. Effective date -- applicability.** [This act] is effective July 1, 2001, and applies to public works contracts entered into on or after [the effective date of this act].

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on February 8, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. Donald Steinbeisser (R)
Rep. James Whitaker (R)

Members Excused: Rep. Carol C. Juneau (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Brett Tramelli (D)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB413, HB493, HB499, HB500, 2/5/2001
Executive Action: HB463, HB493, SB106

business today if he could not distribute his own product. He said no one is better able to promote his or her product than the producer of the product.

Ms. Blazer said she had worked on the bill and she believed it was a good bill. She said the bill does not allow for direct shipment of the product by the winery, and that wineries are not allowed to transport the product.

Mr. Staples said he hoped the small wineries would grow to the place where they would want to go with the distribution system in place now. He said the distributors have great community relationships and that is an advantage to getting the products introduced. He supported the small wineries being able to sell their product as called for in the bill.

Opponents' Testimony: None

Informational Witnesses: **Neil Peterson, Department of Revenue,** was available for questions.

Questions from Committee Members and Responses:

REP. LAIBLE asked **Mr. Staples** about internet and direct consumer sales. **Mr. Staples** said the bill does not effect the ability for the small wineries to export their product outside the state, but that would depend on the other state's liquor laws. He added the bill does not allow direct shipment to a consumer, only to a licensed retailer.

Closing by Sponsor:

REP. FRITZ said she appreciated the testimony and urged the committee to pass the bill.
{Tape : 2; Side : A; Approx. Time Counter : 0}

HEARING ON HB500

Sponsor: REP. DAVID WANZENRIED, HD68, Missoula

Proponents: Gene Fenderson, Montana Joint Heavy and Highway Equipment
Bob Pavolich, IBEW233
Jerry Driscoll, Building Trades
Fred Dahlman, G.F. Slutton Construction Co.
Pat Pennington, Pennington Construction
Terry Leishman, Local Engineers, #400
Darrel Holser, MT AFL-CIO

Opponents: **Ed Maronick, Montana Contractors Assn.**
Byron Roberts, Building Industry Assn.
Riley Johnson, NFIB

Opening Statement by Sponsor:

REP. DAVID WANZENRIED, HD68, Missoula, said this bill revises certain provisions of the "little Davis-Bacon laws." The bill changes the prevailing wage from one computed based on a weighted average to one computed based on work performed. It also calls for the posting of the prevailing wage and fringe benefits, and the keeping of certain records for 3 years after completion of work on a project.

Proponents' Testimony:

Mr. Fenderson explained to the committee that historically prevailing wage laws said that workers were not to be paid less than the prevailing wages in the area where they are employed. He said there are 10 wage districts set for building construction in the state. The essence of this bill is how these wages are surveyed and how they are set, he said. Also the wages must be displayed in a public area on the job site, and records must be maintained three years after the job is completed. He said there have been fewer responses to the wage surveys and they were not an accurate report. He said a large building project which took years could delay reporting and not reflect current wages. He said wages have been declining in all 10 districts since 1996, while costs have been rising. He said low construction job wages in Montana were creating the overall low wage figures for Montana.
{Tape : 2; Side : A; Approx. Time Counter : 24.8}

Mr. Pavolich called this a good bill which made sense.

Mr. Driscoll agreed the surveys have not been very accurate.
EXHIBIT(buh32a04)

Mr. Dahlman said his company employed a few over 200 workers, but Montana construction was only about 8% of their work. He testified that building trades are shrinking and seeing a decline. He added the work force is growing older, retiring , and the young people are leaving the state. He said a skilled worker can earn $21.00 per hour plus benefits in Las Vegas. "It is important for Montana to do something," he said, "because the surveys haven't worked." He told the committee if they passed

this bill, they will prove to the young people of Montana, the legislature wants them to find good jobs and stay here.

{Tape : 2; Side : B; Approx. Time Counter : 0}
Mr. Pennington supported the bill and agreed with the previous testimony.

Mr. Leishman said he could name a large number of apprentices who have left for better wages. He compared Spokane wages of $24 an hour to Billings wages of $16 an hour.

Mr. Holser he strongly supported the bill and the committee had already heard the key issues. He called the bill a fairness issue and said the committee should make sure the taxpayers get an "honest bang for their buck."

Opponents' Testimony:

Mr. Maronick said he opposed the bill as written. He said calculating the wages is the problem. He said this bill would open up to rule-making, and is too broad.

Mr. Roberts said he represented 1500 men and he believed the process should stay in law and not in rule.
{Tape : 2; Side : B; Approx. Time Counter : 7}
Mr. Johnson said the powers granted to the work force should be set by the legislature and not left to administrative rule.
{Tape : 2; Side : B; Approx. Time Counter : 8}
Informational Witnesses: Russ Katerman, Department of Administration, questioned some of the wording in the bill.
{Tape : 2; Side : B; Approx. Time Counter : 12.6}
Questions from Committee Members and Responses:

Closing by Sponsor:

REP. WANZENRIED asked the committee to pass the bill.

{Tape : 2; Side : B; Approx. Time Counter : 17.2}

HEARING ON HB413

Sponsor: REP. BOB DAVIES, HD27, Bozeman

Proponents: Steve Ertelt, Montana Right to Life
Julie Millam, Montana Christian Coalition

EXHIBIT 4
DATE 2-1-01
HB 489

(4)

TESTIMONY ON H.B. 489

BY

GENE VUCKOVICH

Chairman McKenney, Committee Members, for the record I am Gene Vuckovich, Executive Director of the Montana Rural Development Partners, Inc. which is a partnership of federal, state, local and tribal governments and private business, both for-profit and non-profit.

I come before you today to urge you to give a 'do pass' recommendation on HB 489. The Montana Rural Development Partners, Inc. (MT RDP) together with the Montana Economic Developers Association are the contracted administrators of the Certified Communities Project that was funded by the special session last year.

In working with the development organization in the various qualifying communities, it has been brought to our attention that the infrastructure tax credit as provided in MCA 7-15-428814 is a most innovative and useful tool. The only problem with this tool is that small start-up businesses that have much potential for becoming very profitable in the future can not take advantage of it during their first few years of operation/start-up when profits are not enough.

In many instances, due to cash flows of new and expanding businesses, they are unable to take advantage of the tax credit and thus the needed infrastructure investment is lost.

This bill would create a situation where industry would be more likely to support the investment of infrastructure if they could realize the benefits of the tax credit in the early, lean days of their businesses.

I urge your support of HB 489 and ask that you give it a "**DO PASS**" recommendation

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on February 9, 2001 at 9:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. James Whitaker (R)

Members Excused: Rep. Bob Lawson (R)
Rep. Brett Tramelli (D)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB436, HB489, HB490, HB504, 2/6/2001
Executive Action: HB413, HB499, HB500, HB504, HB436

Motion/Vote: **REP. MATTHEWS** moved that **HB499 DO PASS. Motion carried unanimously.** Voice Vote.

EXECUTIVE ACTION ON HB500

Motion: **REP. KEANE** moved that **HB500 DO PASS.**

Discussion:

Motion: **REP. GALLIK** moved that **HB500 BE AMENDED.**

Discussion:

Mr. Higgins said the amendment clarified the construction contract.
Vote: Motion **carried unanimously.**

Motion: **REP. KEANE** moved that **HB500 DO PASS AS AMENDED.**

Discussion:

REP. LAIBLE said he was in opposition to the bill and was not sure the current law was broken. "I don't see how this bill will create more jobs," he said. H stated it was putting wages into a rule-making process.

REP. KEANE said he had worked a good part of his life under the prevailing wage and he thought this was a good bill. He said, "If we don't act, we won't have to worry about good workers, because we won't have them." He said the workers will exit Montana if this bill is not passed.

REP. MUSGROVE said there was an issue in Great Falls this bill would have solved.

REP. GALLIK said he did not see the bill as anti-business. He noted the biggest contractors in Montana said it was a good bill.

CHAIRMAN MCKENNEY said he opposed the bill for the same reason as **REP. LAIBLE.** He said the committee had heard from proponents and opponents that the new provisions would be in rule-making.

Vote: Motion **carried 10-9 with Bitney, Brown, Himmelberger, Laible, McKenney, Price, Rome, Steinbeisser, and Whitaker voting no.**

HOUSE OF REPRESENTATIVES
ROLL CALL

HOUSE BUSINESS AND LABOR COMMITTEE

DATE Feb. 9, 2001

NAME	PRESENT	ABSENT	EXCUSED
Rep. Joe McKenney	✓		
Rep. Gary Matthews	✓		
Rep. Roy Brown	✓		
Rep. Kathleen Galvin-Halcro	✓		
Rep. Carol Juneau	✓		
Rep. Rick Laible	✓		
Rep. John Musgrove	✓		
Rep. Nancy Rice-Fritz	✓		
Rep. Don Steinbeisser	✓		
Rep. Jim Whitaker	✓		
Rep. Rod Bitney	✓		
Rep. Sylvia Bookout-Reinicke	✓		
Rep. Dave Gallik	✓		✓
Rep. Dennis Himmelberger	✓		
Rep. Jim Keane	✓		
Rep. Bob Lawson			✓
Rep. Bill Price	✓		
Rep. Brett Tramelli			✓
Rep. Allen Rome	✓		

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** report that **House Bill 500** (first reading copy - white) **do pass as amended.**

Signed: _____
Representative Joe McKenney, Chair

And, that such amendments read:

1. Page 3, line 27.
Following: "of"
Insert: "construction"
Following: "~~employers~~"
Insert: "and the biennial survey of nonconstruction service employers"

- END -

Committee Vote:
Yes 10, No 9.

331452SC.hdc

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on March 9, 2001 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:
Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Dale Mahlum (R)
Sen. Glenn Roush (D)

Members Excused: Sen. Dale Berry (R)
Sen. Don Ryan (D)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:	HB 493, 3/6/2001; HB 499, 3/6/2001; HB 500, 3/6/2001
Executive Action:	HB 493; HB 489; HB 479; HB 218; HB 230; HB 500;HB 437; HB 399

Discussion: **SENATOR COCCHIARELLA** said that every public business should be inspected every year for public safety. This would be in places people congregate.

Vote: **Motion carried unanimously.**

Motion/Vote: **SEN. TAYLOR** moved that **HB 230 BE CONCURRED IN AS AMENDED. Motion carried 7-2 with Cocchiarella and Ryan voting no.**

HEARING ON HB 500

Sponsor: **REPRESENTATIVE DAVE WANZENRIED, HD 68, MISSOULA**

Proponents: **Gene Fenderson, MT Heavy and Highway Committee**
Robert Pavlovich, IBEW-233
Tom Ebzery, Montana Contractors Association
Darrell Holzer, AFL-CIO

Opponents: None

Opening Statement by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 9.5}

REPRESENTATIVE DAVE WANZENRIED, HD 68, MISSOULA, said this bill would make some changes in the Little Davis Bacon Law, which establishes rates for skilled laborers on publicly funded projects. The most important change is a revision in the way prevailing wage is calculated.

Proponents' Testimony:

Gene Fenderson, Montana Heavy and Highway Committee, explained in detail the bill, section by section.

Robert Pavlovich, IBEW-233,said he supports the bill.

Tom Ebzery, Montana Contractors Association, said they support the bill as amended.

Darrell Holzer, AFL-CIO, said he supports the bill and he thinks this will make constructions projects more appealing to valuable, skilled workers.

Opponents' Testimony: none

Questions from Committee Members and Responses: None

Closing by Sponsor:

{Tape : 2; Side : B; Approx. Time Counter : 2.5}

REPRESENTATIVE DAVE WANZENRIED, HD 68, MISSOULA, said this bill would bring about changes needed to even out the fluctuations in the wages paid for public projects.

EXECUTIVE ACTION ON HB 500

Motion/Vote:: SEN. ROUSH moved that **HB 500 BE CONCURRED IN. Motion carried unanimously.**

EXECUTIVE ACTION ON HB 437

Motion: SEN. COCCHIARELLA moved that **HB 437 BE CONCURRED IN.**

Discussion: SENATOR BUTCHER said he has a problem with having to inspect the dumb waiters and freight elevators every year. The people only use it for themselves, and he said he has a problem charging them $100.00 a year. **Jim Brown** was asked what the major changes from the current law were. He said that at the current time the state of Montana does inspections on passenger elevators only every year, and with the passage of this bill it would include freight elevators and dumbwaiters. **SENATOR ROUSH** said that inspections would reduce the costs of insurance and also it is a safety issue. He said it would provide for more income coming into the department. **SENATOR TAYLOR** said he wanted to study the bill further, so he was postponing action until later.

EXECUTIVE ACTION ON HB 399

Motion/Vote: SEN. BUTCHER moved that **HB 399 BE CONCURRED IN. Motion carried unanimously.**

ADJOURNMENT

DATE 3-9-2001

SENATE COMMITTEE ON Business & Labor

BILLS BEING HEARD TODAY: HB 493, HB 499, HB 500

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Andy Sponsellor	5494647	Rattlesnake Creek Winery	HB 493		
Judith Chapman	549-9934	Lolo Peak Winery	HB 493		
GENE FEDDERSON	431-6657	MSHHC	HB-500	✓	
Peg Cikens	443-6242	Keep Mt. Clean Butte	HB 499	✓	
Tom Ebzery	441-7531	MT Contractors Assn	HB 500	✓	
Jani McCall	442-0216	City of Bozeman	HB 499	✓	
ROBERT PAVLOVICH	782-4587	IBEW-233 - Butte	HB 500	✓	
Nicole Prokop	285-3991	Holham	499	✓	
Lou Moore		DEQ			
Jerry Driscoll	860-8050	Building Trades	500	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL VOTE

DATE 3-9-2001 BILL NO. HB500 NUMBER 11

MOTION: Sen Roush moves BE CONCURRED

Sen Roush Carry.

NAME	AYE	NO
SENATOR DALE BERRY		
SENATOR ED BUTCHER		
SENATOR VICKI COCCHIARELLA		
SENATOR SAM KITZENBERG		
SENATOR DALE MAHLUM		
SENATOR GLENN ROUSH		
SENATOR DON RYAN		
SENATOR MIKE SPRAGUE, VICE CHAIR		
SENATOR MIKE TAYLOR, CHAIR		

AN ACT REVISING CERTAIN PROVISIONS OF THE LITTLE DAVIS-BACON LAWS; CHANGING THE PREVAILING WAGE FROM ONE COMPUTED BASED ON A WEIGHTED AVERAGE TO ONE COMPUTED BASED ON WORK PERFORMED; REQUIRING POSTING OF PREVAILING WAGE AND FRINGE BENEFIT RATES; REQUIRING A CONTRACTING AGENCY TO NOTIFY A PUBLIC WORKS CONTRACTOR OR EMPLOYER OF THE REQUIREMENT TO KEEP CERTIFIED PAYROLL RECORDS FOR 3 YEARS AFTER COMPLETION OF WORK ON A PROJECT; REQUIRING SURVEYS OF CONTRACTORS AND EMPLOYERS; AMENDING SECTIONS 18-2-401, 18-2-406, AND 18-2-422, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 18-2-401, MCA, is amended to read:

"**18-2-401. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. ~~Sojourners or persons~~ Persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) "Construction services" means work performed by an individual in construction, heavy construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a public works contract; or

(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) "Contractor" means any general contractor, subcontractor, firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in construction services.

~~(4)~~(5) "Department" means the department of labor and industry provided for in 2-15-1701.

~~(5)~~(6) "District" means a prevailing wage rate district established as provided in 18-2-411.

(7) "Employer" means any firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in nonconstruction services.

~~(6)~~(8) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of bor and zone pay and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public.

~~(7)~~(9) "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

(a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;

(b) custodial or security services for publicly owned buildings and facilities;

(c) grounds maintenance for publicly owned property;

(d) the operation of public drinking water supply, waste collection, and waste disposal systems;

(e) law enforcement, including janitors and prison guards;

(f) fire protection;

(g) public or school transportation driving;

(h) nursing, nurse's aid services, and medical laboratory technician services;

(i) material and mail handling;

(j) food service and cooking;

(k) motor vehicle and construction equipment repair and servicing; and

(l) appliance and office machine repair and servicing.

~~(8)~~(10) "Project location" means the construction site where a public works project involving construction services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and specifications.

~~(9)~~(11) (a) "Public works contract" means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of $25,000. The nonconstruction services classification does not apply to any school district that at any time prior to April 27, 1999, contracted with a private contractor for the provision of nonconstruction services on behalf of the district.

(b) The term does not include contracts entered into by the department of public health and human services for the provision of human services.

~~(10)~~(12) "Special circumstances" means all work performed at a facility that is built or developed for a specific Montana public works project and that is located in a prevailing wage district that contains the project location or that is located in a contiguous prevailing wage district.

~~(11)~~(13) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed ~~from a weighted average wage rate based on all of the hours worked on work~~ by the department based on work performed by Montana contractors who are registered under Title 39, chapter 9, and whose work is performed according to commercial building codes. The contractor survey must include information pertaining to the number of skilled craftspersons employed in the employer's peak month of employment and the wages

and benefits paid for each craft. In setting the prevailing wages from the survey for each craft, the department shall use the weighted average wage for each craft, except in those cases in which the survey shows that 50% of the craftspersons are receiving the same wage. When the survey shows that 50% of the craftspersons are receiving the same wage, that wage is the prevailing wage for that craft. The work performed must be work of a similar character to the work performed in the district unless the annual survey ~~of~~ of construction contractors ~~employers~~ and the biennial survey of nonconstruction service employers in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by ~~a~~ the survey of employers in the district th requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

~~(12)~~(14) "Work of a similar character" means work on private ~~or~~ commercial projects as well as work on public projects."

Section 2. Section 18-2-406, MCA, is amended to read:

"**18-2-406. Posting wage scale and fringe benefits.** ~~Contractors, subcontractors, and employers who are~~ The contractor performing work or providing construction services under public works contracts,

as provided in this part, shall post in a prominent and accessible site on the project or ~~work area~~ staging area, not later than the first day of work and continuing for the entire duration of the project, a legible statement of all wages and fringe benefits to be paid to the employees ~~employed on such site or work area~~. The contracting agency is responsible for ensuring that the required statement is posted and maintained."

Section 3. Section 18-2-422, MCA, is amended to read:

"**18-2-422. Bid specification and public works contract to contain standard prevailing wage rate and certified payroll record notification**. All public works contracts and the bid specifications for those contracts must contain:

(1) a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, that the contractors ~~and subcontractors~~ and employers shall pay during construction of the project; and

(2) a provision requiring the contracting agency to notify each contractor and employer of the requirement to maintain certified payroll records for not less than 3 years after the contractor's or employer's completion of work on the project."

Section 4. Effective date -- applicability. [This act] is effective July 1, 2001, and applies to public works contracts entered into on or after [the effective date of this act].

- END -

OFFICE OF THE GOVERNOR

STATE OF MONTANA

JUDY MARTZ
GOVERNOR

STATE CAPITOL
PO BOX 200801
HELENA, MONTANA 59620-0801

March 29, 2001

The Honorable Dan McGee
Speaker of the House
State Capitol
Helena, MT 59620

The Honorable Tom Beck
President of the Senate
State Capitol
Helena, MT 59620

Dear Speaker McGee and President Beck:

In accordance with the powers vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return with amendments House Bill 500, "AN ACT REVISING CERTAIN PROVISIONS OF THE LITTLE DAVIS-BACON LAWS; CHANGING THE PREVAILING WAGE FROM ONE COMPUTED BASED ON A WEIGHTED AVERAGE TO ONE COMPUTED BASED ON WORK PERFORMED; REQUIRING POSTING OF PREVAILING WAGE AND FRINGE BENEFITS RATES; REQUIRING A CONTRACTING AGENCY TO NOTIFY A PUBLIC WORKS CONTRACTOR OR EMPLOYER OF THE REQUIREMENT TO KEEP CERTIFIED PAYROLL RECORDS FOR 3 YEARS AFTER COMPLETION OF WORK ON A PROJECT; REQUIRING SURVEYS OF CONTRACTORS AND EMPLOYERS; AMENDING SECTIONS 18-2-401, 18-2-406, AND 18-2-422, MCA AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.", for the following reasons.

I do not have significant concerns with Section 1 of HB 500, which revises the method by which the Department of Labor and Industry computes the standard prevailing rate of wages. I do, however, have concerns with portions of Sections 2 and 3 of the bill, which modify existing law regarding the posting of wage and fringe benefit information on job sites and the provisions required in public works contracts and bid specifications under Title 18, Chapter 2, MCA. I recommend deleting the current language in Section 2 that requires the contracting agency to

HB 500

be "responsible for ensuring" the posting and maintenance of the required wage scale. I also recommend that Section 3 be amended to reflect a requirement that contracts and bid specifications contain (1) express notice of the posting requirement and (2) express notice of the requirement that contractors and employers maintain necessary payroll records. I have attached my amendments to that effect.

Section 2 of the bill modifies existing law [§ 18-2-406, MCA], which already requires that a statement of all prevailing wages be posted on the job site. Under the bill, § 18-2-406, MCA would now require a "contracting agency" to be "responsible for ensuring" that the required statement:

- be posted in a prominent and accessible site on the project or staging area; and

- that such statement be posted not later than the first day of work and continuing for the entire duration of the project.

I believe that such a requirement reflects unsound public policy and creates, at best, a vague enforcement standard in terms of what it means for a "contracting agency" to be "responsible for ensuring" that a particular document is appropriately posted.

Under present law, contractors are already responsible for complying with the posting requirements under § 18-2-406, MCA. Under present law, contractors already face penalties if they do not "ensure" their own compliance with that posting requirement. *See* § 18-2-432, MCA. With that in mind, I do not believe that imposing a vague enforcement standard on state and local governmental entities will accomplish any meaningful objective. Rather, it will simply raise potential issues as to when an agency, a county or a school district fails to fulfill its "responsibility" for "ensuring" that a certain document be posted in a certain place and for a certain duration of time.

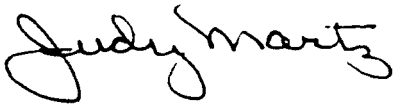
A better policy is to expressly place all contractors and employers on notice of the posting requirements at the outset of the public contracting process, i.e., in the contract documents and bid specifications. If they fail to comply with those requirements after being expressly placed on notice of them, they will face penalties under existing law. Accordingly, I recommend that a new provision be inserted in Section 3, which would require such notice.

I also recommend that the provision in Section 3 concerning the requirement for a contract provision requiring the agency to notify each contractor and employer of the requirement to maintain certified payroll records be modified. In its current form, the bill would require the contracting agency to place a provision in its own contract requiring itself to notify the contractor of the payroll record retention requirement. If the objective here is to ensure that contractors are placed on

notice of the record retention requirement, that objective can be accomplished by simply requiring such notice in the contract documents and bid specifications. It is redundant to require an agency to insert a contract provision requiring itself to give the notice. Accordingly, I recommend that this provision be modified to simply require notice to the contractor of this requirement in the contract documents and the bid specifications.

Finally, I also recommend a slight amendment to the language concerning "certified" payroll records. I do not believe that it is necessary to require all public contractors to maintain "certified" payroll records at all times. Rather, the law simply requires that, in the event a dispute arises, a contractor be in a position to submit "certified" copies to the Department of Labor and Industry. *See* § 18-2-423, MCA. In the many instances where no disputes ever arise, there is simply no need for government to impose a requirement that payroll records in the possession of a contractor actually be "certified". By requiring that contractors be in a position to produce "certified" records if and when necessary, the objectives of our existing law will still be appropriately met.

Sincerely,



JUDY MARTZ
Governor

c: Legislative Services Division
Office of Budget and Program Planning
Department of Labor and Industry
Department of Administration

GOVERNOR'S AMENDMENTS TO HOUSE BILL NO. 500
(Reference Bill --2nd Reading, 2nd House [Tan])

Drafted by the Office of the Governor

March 29, 2001

1. Title, line 8
Following: "REQUIRING"
Strike: "A CONTRACTING AGENCY TO NOTIFY"
Insert: "NOTICE TO"

2. Title, line 9
Following: "OF"
Insert: "THE REQUIREMENT TO POST PREVAILING WAGE AND BENEFIT RATES AND"

3. Title, line 9
Following: "KEEP"
Strike: "CERTIFIED"

4. Page 5, line 1
Following: "~~area~~"
Strike: remainder of lines 1 and 2

5. Page 5, line 11
Following: "requiring"
Strike: "the contracting agency to notify"

6. Page 5, line 11
Following: "employer"
Strike: "of the requirement"

HB 500

7. Page 5, line 12
Following: "maintain"
Strike: "certified"

8. Page 5, line 12
Following: "records"
Insert: ", in a manner readily capable of being certified for submission under 18-2-423,"

9. Page 5, line 14
Insert: "(3) a provision requiring each contractor to post a statement of all wages and fringe benefits in compliance with 18-2-406."

HOUSE BILL NO. 500

INTRODUCED BY D. WANZENRIED, RYAN, CYR, G. FORRESTER, HARRINGTON, ROUSH, S TOOLE, KITZENBERG

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN PROVISIONS OF THE DAVIS-BACON LAWS; CHANGING THE PREVAILING WAGE FROM ONE COMPUTED BASE WEIGHTED AVERAGE TO ONE COMPUTED BASED ON WORK PERFORMED; REQUIRING POS PREVAILING WAGE AND FRINGE BENEFIT RATES; REQUIRING ~~A CONTRACTING AGENCY TO~~ NOTICE TO A PUBLIC WORKS CONTRACTOR OR EMPLOYER OF THE REQUIREMENT PREVAILING WAGE AND BENEFIT RATES AND THE REQUIREMENT TO KEEP ~~CERTIFIED~~ RECORDS FOR 3 YEARS AFTER COMPLETION OF WORK ON A PROJECT; REQUIRING SUF CONTRACTORS AND EMPLOYERS; AMENDING SECTIONS 18-2-401, 18-2-406, AND 18-2-4 AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 18-2-401, MCA, is amended to read:

"18-2-401. Definitions. Unless the context requires otherwise, in this part, the definitions apply:

(1) A "bona fide resident of Montana" is a person who, at the time of emplo immediately prior to the time of employment, has lived in this state in a manner and for a t sufficient to clearly justify the conclusion that the person's past habitation in this state has be with an intention to make it the person's home. ~~Sojourners or persons~~ Persons who come t solely in pursuance of any contract or agreement to perform labor may not be considered to b residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2

(3) (a) "Construction services" means work performed by an individual in construc construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a public wor

REFERENCE BILL: INCLUDES GOVERNOR'S AMENDMENTS DATED

or

(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) "Contractor" means any general contractor, subcontractor, firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in construction services.

~~(4)~~(5) "Department" means the department of labor and industry provided for in 2-15-1701.

~~(5)~~(6) "District" means a prevailing wage rate district established as provided in 18-2-411.

(7) "Employer" means any firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in nonconstruction services.

~~(6)~~(8) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and zone pay and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public.

~~(7)~~(9) "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

(a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;

(b) custodial or security services for publicly owned buildings and facilities;

(c) grounds maintenance for publicly owned property;

(d) the operation of public drinking water supply, waste collection, and waste disposal systems;

(e) law enforcement, including janitors and prison guards;

(f) fire protection;

(g) public or school transportation driving;

(h) nursing, nurse's aid services, and medical laboratory technician services;

(i) material and mail handling;

(j) food service and cooking;

(k) motor vehicle and construction equipment repair and servicing; and

(l) appliance and office machine repair and servicing.

~~(8)~~(10) "Project location" means the construction site where a public works project involving construction services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and specifications.

~~(9)~~(11) (a) "Public works contract" means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of $25,000. The nonconstruction services classification does not apply to any school district that at any time prior to April 27, 1999, contracted with a private contractor for the provision of nonconstruction services on behalf of the district.

(b) The term does not include contracts entered into by the department of public health and human services for the provision of human services.

~~(10)~~(12) "Special circumstances" means all work performed at a facility that is built or developed for a specific Montana public works project and that is located in a prevailing wage district that contains the project location or that is located in a contiguous prevailing wage district.

~~(11)~~(13) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed ~~from a weighted average wage rate based on all of the hours worked on work~~ by the department based on work performed by Montana contractors who are registered under Title 39, chapter 9, and whose work is performed according to commercial building codes. THE CONTRACTOR SURVEY MUST INCLUDE INFORMATION PERTAINING TO THE NUMBER OF SKILLED CRAFTSPERSONS EMPLOYED IN THE EMPLOYER'S PEAK MONTH OF EMPLOYMENT AND THE WAGES AND BENEFITS PAID FOR EACH CRAFT. IN SETTING THE PREVAILING WAGES FROM THE SURVEY FOR EACH CRAFT, THE

DEPARTMENT SHALL USE THE WEIGHTED AVERAGE WAGE FOR EACH CRAFT, EXCEPT IN THOSE CASES IN WHICH THE SURVEY SHOWS THAT 50% OF THE CRAFTPERSONS ARE RECEIVING THE SAME WAGE. WHEN THE SURVEY SHOWS THAT 50% OF THE CRAFTSPERSONS ARE RECEIVING THE SAME WAGE, THAT WAGE IS THE PREVAILING WAGE FOR THAT CRAFT. The work performed must be work of a similar character to the work performed in the district unless the annual survey ~~of~~ of CONSTRUCTION contractors ~~employers~~ AND THE BIENNIAL SURVEY OF NONCONSTRUCTION SERVICE EMPLOYERS in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by ~~a~~ the survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

~~(12)~~(14) "Work of a similar character" means work on private ~~or~~ commercial projects as well as work on public projects."

Section 2. Section 18-2-406, MCA, is amended to read:

"18-2-406. Posting wage scale and fringe benefits. ~~Contractors, subcontractors, and employers who are~~ The contractor performing work or providing construction services under public works contracts, as provided in this part, shall post in a prominent and accessible site on the project or ~~work area~~ staging area, not later than the first day of work and continuing for the entire duration of the project, a legible

statement of all wages and fringe benefits to be paid to the employees ~~employed on such site or work area~~. ~~The contracting agency is responsible for ensuring that the required statement is posted and maintained.~~"

Section 3. Section 18-2-422, MCA, is amended to read:

"**18-2-422. Bid specification and public works contract to contain standard prevailing wage rate and ~~certified~~ payroll record notification.** All public works contracts and the bid specifications for those contracts must contain:

(1) a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, that the contractors ~~and subcontractors~~ and employers shall pay during construction of the project; ~~and~~

(2) a provision requiring ~~the contracting agency to notify~~ each contractor and employer ~~of the requirement~~ to maintain ~~certified~~ payroll records IN A MANNER READILY CAPABLE OF BEING CERTIFIED FOR SUBMISSION UNDER 18-2-423, for not less than 3 years after the contractor's or employer's completion of work on the project; AND

(3) A PROVISION REQUIRING EACH CONTRACTOR TO POST A STATEMENT OF ALL WAGES AND FRINGE BENEFITS IN COMPLIANCE WITH 18-2-423."

NEW SECTION. **Section 4. Effective date -- applicability.** [This act] is effective July 1, 2001, and applies to public works contracts entered into on or after [the effective date of this act].

- END -

AN ACT REVISING CERTAIN PROVISIONS OF THE LITTLE DAVIS-BACON LAWS; CHANGING THE PREVAILING WAGE FROM ONE COMPUTED BASED ON A WEIGHTED AVERAGE TO ONE COMPUTED BASED ON WORK PERFORMED; REQUIRING POSTING OF PREVAILING WAGE AND FRINGE BENEFIT RATES; REQUIRING NOTICE TO A PUBLIC WORKS CONTRACTOR OR EMPLOYER OF THE REQUIREMENT TO POST PREVAILING WAGE AND BENEFIT RATES AND THE REQUIREMENT TO KEEP PAYROLL RECORDS FOR 3 YEARS AFTER COMPLETION OF WORK ON A PROJECT; REQUIRING SURVEYS OF CONTRACTORS AND EMPLOYERS; AMENDING SECTIONS 18-2-401, 18-2-406, AND 18-2-422, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 18-2-401, MCA, is amended to read:

"**18-2-401. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. ~~Sojourners or persons~~ Persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) "Construction services" means work performed by an individual in construction, heavy construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a public works contract; or

(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) "Contractor" means any general contractor, subcontractor, firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in construction services.

~~(4)~~(5) "Department" means the department of labor and industry provided for in 2-15-1701.

~~(5)~~(6) "District" means a prevailing wage rate district established as provided in 18-2-411.

(7) "Employer" means any firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in nonconstruction services.

~~(6)~~(8) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and zone pay and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public.

~~(7)~~(9) "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

(a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;

(b) custodial or security services for publicly owned buildings and facilities;

(c) grounds maintenance for publicly owned property;

(d) the operation of public drinking water supply, waste collection, and waste disposal systems;

(e) law enforcement, including janitors and prison guards;

(f) fire protection;

(g) public or school transportation driving;

(h) nursing, nurse's aid services, and medical laboratory technician services;

(i) material and mail handling;

(j) food service and cooking;

(k) motor vehicle and construction equipment repair and servicing; and

(l) appliance and office machine repair and servicing.

~~(8)~~(10) "Project location" means the construction site where a public works project involving construction services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and specifications.

~~(9)~~(11) (a) "Public works contract" means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of $25,000. The nonconstruction services classification does not apply to any school district that at any time prior to April 27, 1999, contracted with a private contractor for the provision of nonconstruction services on behalf of the district.

(b) The term does not include contracts entered into by the department of public health and human services for the provision of human services.

~~(10)~~(12) "Special circumstances" means all work performed at a facility that is built or developed for a specific Montana public works project and that is located in a prevailing wage district that contains the project location or that is located in a contiguous prevailing wage district.

~~(11)~~(13) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed ~~from a weighted average wage rate based on all of the hours worked on work~~ by the department based on work performed by Montana contractors who are registered under Title 39, chapter 9, and whose work is performed according to commercial building codes. The contractor survey must include information pertaining to the number of skilled craftspersons employed in the employer's peak month of employment and the wages

and benefits paid for each craft. In setting the prevailing wages from the survey for each craft, the department shall use the weighted average wage for each craft, except in those cases in which the survey shows that 50% of the craftspersons are receiving the same wage. When the survey shows that 50% of the craftspersons are receiving the same wage, that wage is the prevailing wage for that craft. The work performed must be work of a similar character to the work performed in the district unless the annual survey ~~of~~ of construction contractors ~~employers~~ and the biennial survey of nonconstruction service employers in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by ~~a~~ the survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

~~(12)~~(14) "Work of a similar character" means work on private ~~or~~ commercial projects as well as work on public projects."

Section 2. Section 18-2-406, MCA, is amended to read:

"**18-2-406. Posting wage scale and fringe benefits.** ~~Contractors, subcontractors, and employers who are~~ The contractor performing work or providing construction services under public works contracts,

as provided in this part, shall post in a prominent and accessible site on the project or ~~work area~~ staging area, not later than the first day of work and continuing for the entire duration of the project, a legible statement of all wages and fringe benefits to be paid to the employees ~~employed on such site or work area~~. "

Section 3. Section 18-2-422, MCA, is amended to read:

"**18-2-422. Bid specification and public works contract to contain standard prevailing wage rate and payroll record notification**. All public works contracts and the bid specifications for those contracts must contain:

(1) a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, that the contractors ~~and subcontractors~~ and employers shall pay during construction of the project;

(2) a provision requiring each contractor and employer to maintain payroll records in a manner readily capable of being certified for submission under 18-2-423, for not less than 3 years after the contractor's or employer's completion of work on the project; and

(3) a provision requiring each contractor to post a statement of all wages and fringe benefits in compliance with 18-2-423."

Section 4. Effective date -- applicability. [This act] is effective July 1, 2001, and applies to public works contracts entered into on or after [the effective date of this act].

- END -